

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CAROLINE NESIAMA-GBENEDIO,

Plaintiff,

vs.

KINDRED HOSPITAL NORTH CAMPUS,

Defendant.

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CIVIL ACTION H-13-740

ORDER


Pending before the court is defendant Kindred Hospitals Limited Partnership's ("Kindred Limited") Rule 12(b)(6) motion to dismiss for failure to state a claim. Dkt. 13. On January 9, 2014, the court ordered plaintiff Nesiam-Gbenedio to file proof that she served the defendant named in her lawsuit within twenty days of the date of the order or risk dismissal. Dkt. 10. Nesiam-Gbenedio filed proof of service within the required timeframe. Dkt. 11. However, upon further inspection, the proof of service indicates that Nesiam-Gbenedio served Kindred Limited rather than the named defendant, Kindred Hospital, North Campus. *Compare* Dkt. 1 (complaint against *Kindred Hospital North Campus*); Dkt. 10 (order to file proof of service relating to complaint against *Kindred Hospital North Campus*); and Dkt. 11 (proof of service to *Kindred Hospitals Limited Partnership*). Unsurprisingly, Kindred Limited, which is not named in the complaint, now moves for dismissal.

In the motion, Kindred Limited argues that Kindred Limited is not mentioned anywhere in the complaint or supporting documents filed by Nesiam-Gbenedio. *Id.* Kindred Limited also attaches public records, which the court may take judicial notice of, that indicate that an entity other than Kindred Limited operates Kindred Hospital, North Campus. Dkt. 13, Exs. A-C.

Nesiama-Gbenedio did not respond to Kindred Limited's motion to dismiss. Under Southern District of Texas Local Rule 7.4, "[f]ailure to respond [to a motion] will be taken as a representation of no opposition." S.D. Tex. L.R. 7.4. Thus, the court treats Kindred Limited's motion as unopposed. Kindred Limited's motion to dismiss (Dkt. 13) is GRANTED, and any claims inferred by serving the complaint to Kindred Limited are DISMISSED WITH PREJUDICE.

Since Nesiama-Gbenedio served the wrong defendant, the court again NOTIFIES Nesiama-Gbenedio that she must file adequate proof of service in order to maintain her claim. Nesiama-Gbenedio shall file proof of service to *Kindred Hospital North Campus* within twenty (20) days of the date of this order. If she fails to do so *or* if she serves an entity other than the entity named in her complaint, her claims will be dismissed.

Signed at Houston, Texas on March 12, 2014.



Gray H. Miller
United States District Judge